

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-0634V

UNPUBLISHED

DEBORAH PEEPLES,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: September 20, 2022

Special Processing Unit (SPU);
Ruling on Entitlement; Uncontested;
Table Injury; Pneumococcal
Conjugate Vaccine; Shoulder Injury
Related to Vaccine Administration
(SIRVA)

Howard Scott Gold, Howard S. Gold, Sudbury, MA, for Petitioner.

Althea Walker Davis, U.S. Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On May 21, 2020, Deborah Peeples filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a right shoulder injury related to vaccine administration (“SIRVA”) caused-in-fact by the pneumococcal 13-valent vaccine³ she received on January 25, 2018. Petition at 1, ¶¶ 1-2, 22. Petitioner further alleges that

¹ Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

³ The pneumococcal 13-valent vaccine is a pneumococcal conjugate vaccine - routinely administered to children, and covered by the Vaccine Program. See *Morrison v. Sec'y of Health & Hum. Servs.*, No. 04-1683, 2005 WL 2008245, at *1 (Fed. Cl. Spec. Mstr. July 26, 2005) (describing how and when pneumococcal conjugate vaccines were added to the Vaccine Table).

she received the vaccine within the United States, that she continues to suffer the residual effects of her injury more than six months post-vaccination, and that neither she nor any other party has filed a civil action or received compensation for her injury. Petition at ¶¶ 1, 20, 23. The case was assigned to the Special Processing Unit of the Office of Special Masters.

After Respondent questioned whether Petitioner had satisfied the Vaccine Act's severity requirement (ECF No. 24), I ordered the parties to file briefing on the issue. Non-pdf Order, issued July 28, 2021. On May 26, 2022, I issued a factual finding that Petitioner continued to suffer the residual effects of her alleged SIRVA for more than six months and thus, had satisfied the severity requirement. Findings of Fact and Conclusions of Law at 2, ECF No. 35. However, in the ruling, I noted there were unrelated events, specifically an aggravation of Petitioner's condition and fall in 2020, which may affect the appropriate amount of compensation in this case. *Id.* at 9.

After reviewing my factual finding and while reserving his right to appeal that finding, Respondent has indicated that he will not defend the case on other grounds. Rule 4(c) Report, filed Sept. 20, 2022, at 2, 2 n.1, ECF No. 40. Specifically, Respondent "will not continue to contest that [P]etitioner suffered SIRVA as defined by the Vaccine Injury Table." *Id.* at 8. Petitioner further indicates that "based on the record as it now stands and subject to his right to appeal the Findings of Fact, [R]espondent does not dispute that [P]etitioner has satisfied all legal prerequisites for compensation under the Act." *Id.*

In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master